

THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.10948 OF 2005

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DATED: 26-04-2006

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BETWEEN

Smt. A. Padmavathi Devi,

W/o. Sri A. Sriram,

R/o. Baghamberpet,

Hyderabad.

...PETITIONER

AND

Municipal Corporation of Hyderabad,

Rep. by its Commissioner,

Hyderabad.

...RESPONDENT

ORDER:

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Petitioner seeks a Writ of Mandamus to declare the action of the respondent in issuing the Notice dated 29.04.2005 vide Lr.No.1014/CSC/ACP/C3/TPS/MCH/2004 under Section 636 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') as illegal and arbitrary.

Learned counsel for the petitioner submits that the petitioner commenced construction of a residential building after obtaining sanctioned plan for Ground + 3 upper

floors vide permit No.62/20 dated 19.04.2004 and the construction is totally in accordance with the sanction plan and there are no deviations, which could be found of such nature as could be termed as deviations from the sanction plan. While so, the first respondent issued a notice Lr.No.1014/CSC/ACP/C3/TPS/MCH/2004 dated 29.04.2005 under Section 636 of the Hyderabad Municipal Corporations Act, 1995

(for short 'the Act') stating that the petitioner before commencing the work has not served the commencement of work notice in prescribed format and proceeded with the construction in deviation to the sanctioned plan. Accordingly, the petitioner was directed to remove the said deviations/unauthorized structures within three days from the date of receipt of the notice failing which the respondent corporation would be constrained to demolish/remove the said deviations/unauthorized structures.

I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') is in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. If that is the case, it is for the respondents to point out whether the petitioners have converted the parking place into shops. If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the constructions have been made without any permission, has been issued directing the petitioner to remove the structures within three days.

Having regard to the facts and circumstances of the case, the impugned notice in Lr.No.1014/CSC/ACP/C3/TPS/MCH/2004 dated 29-04-2005 is directed to be treated as a show cause notice only permitting the petitioner to file a representation/explanation within ten days from the date of receipt of a copy of this order and till such representation/explanation is considered and appropriate orders are passed and communicated to the petitioner, the respondent shall not remove or demolish the premises of the petitioner.

The writ petition is accordingly disposed of.

V. ESWARAIAH, J

April 26, 2006

DSK